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Locke Lord QuickStudy: New Medicaid/CHIP Managed Care Rule Reins in MLR Reporting

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In late April, the Centers for Medicare & Medicaid Services (CMS) issued the final Managed Care Rule, which codifies revisions intended to "improve access to care, accountability and transparency for the approximately 80 million Medicaid and CHIP beneficiaries who are enrolled in a managed care plan. The Managed Care Rule therefore: (1) "addresses standards for timely access to care and States' monitoring and enforcement efforts"; (2) "reduces State burdens for implementing some State directed provider payments (SDPs) and certain quality reporting requirements"; (3) "adds new standards that will apply when States use in lieu of services and settings (ILOSs) to promote effective utilization and that specify the scope and nature of ILOSs"; (4) imposes more rigor around medical loss ratio (MLR) requirements; and (5) "establishes a quality rating system for Medicaid and CHIP managed care plans."

This QuickStudy focuses on the Managed Care Rule's "significant regulatory revisions" to MLR requirements for Medicaid and CHIP managed care organizations (MCOs)—requirements largely aligning their MLR determination and reporting requirements with those applicable to commercial health insurers and Medicare Advantage plans.

Overview of the Managed Care Rule's Changes to MLR

The Managed Care Rule makes five key revisions to MLR requirements for Medicaid and CHIP MCOs:

- States must provide MLRs to CMS for each separate MCO contracted with the state.
- MCOs must submit actual expenditures/revenues for SDPs as part of their MLR reporting.
- MCOs must report identified or recovered overpayments within 30 calendar days.
- Provider incentive payments are subject to new contractual requirements and reporting revisions that align with Marketplace plan changes.
- Reporting on quality improvement activity (QIA) expenditures and expense allocation is revised to align with Marketplace plan changes.

Detail on MLR Changes Applying This Summer

Below we provide additional detail on the MLR changes with which MCOs must comply as of the effective date of the Managed Care Rule (July 9, 2024).

MLR Changes With Applicability Dates

Description

	Medicaid Citation	CHIP Citation	Applicability Date
Standards for provider incentives	42 C.F.R. § 438.8(e)(2)(iii)(A)	42 C.F.R. § 457.1203(c)	July 9, 2024
Reporting of SDPs in incurred claims for the MLR numerator	42 C.F.R. § 438.8(e)(2)(iii)(C)	N/A (provision applies only to Medicaid)	July 9, 2024
Prohibited costs in quality improvement activities	42 C.F.R. § 438.8(e)(3)(i)	42 C.F.R. § 457.1203(c)	July 9, 2024
Reporting of SDPs in premium revenue for the MLR denominator	42 C.F.R. § 438.8(f)(2)(vii)	N/A (provision applies only to Medicaid)	July 9, 2024
Additional requirements for expense allocation methodology	42 C.F.R. § 438.8(k)(1)(vii)	42 C.F.R. § 457.1203(f)	July 9, 2024

Provider Incentives. Previously, MCOs have been able to characterize provider incentive payments as part of "incurred claims" that are included in the numerator of the MLR calculation. As of July 9, 2024, Medicaid *and* CHIP MCOs may only include as "incurred claims": "The amount of incentive and bonus payments made, or expected to be made, to network providers *that are tied to clearly-defined, objectively measurable, and well-documented clinical or quality improvement standards that apply to providers*." This change is designed to ensure responsible fiscal decisions and prevent inappropriate gamesmanship of the MLR calculation.

SDPs in the MLR Numerator. The Managed Care Rule requires, for Medicaid MCOs *only*, that SDPs to providers be included as "incurred claims" counted in the numerator of the MLR calculation. This change is designed to make Medicaid managed care requirements align with fee-for-service supplemental payment requirements, and CMS considers it "critical for fiscal integrity in Medicaid."

***QIA Expenditures*.** Previously, MCOs could include in the MLR numerator expenses associated with QIA activities that met certain conditions. As of July 9, 2024, both Medicaid *and* CHIP MCOs must ensure that included QIA expenses "**directly relate**[] to activities that improve health care quality." This change is designed to align Medicaid and CHIP MLR QIA requirements with Marketplace requirements and to improve clarity on the types of QIA expenditures that should be included in the MLR numerator.

SDPs in the MLR Denominator. Previously, MCOs had to include in their MLR denominator "adjusted premium revenue," which, generally, is the MCO's "premium revenue" minus federal, state, and local taxes and licensing and regulatory fees. As of July 9, 2024, Medicaid MCOs *only* must include as part of their "premium revenue" amounts received from states for expenditures under SDPs. This change also is designed to make Medicaid managed care requirements align with fee-for-service supplemental payment requirements, and CMS considers it "critical for fiscal integrity in Medicaid."

Allocation Methodologies. The Managed Care Rule requires both Medicaid *and* CHIP MCOs to implement and disclose more detailed methodologies for allocation of expenditures related to the MLR calculation. Specifically, as of July 9, 2024, methodology(ies) for allocation of expenditures "must include a detailed description of the methods used to allocate expenses, including incurred claims, quality improvement expenses, Federal and State

taxes and licensing or regulatory fees, and other nonclaims costs," as further described in MLR disclosure and reporting regulations. This change is designed to make Medicaid managed care requirements align more closely with fee-for-service supplemental payment requirements.

Given the MLR changes summarized above, Medicaid and CHIP MCOs will need to quickly reevaluate their provider incentive programs, QIA determinations, and MLR reporting practices, processes, and recordkeeping to ready themselves for the July 9, 2024 applicability date. Furthermore, MCOs may need to model whether the impact of such changes will impair their ability to satisfy state MLR requirements and to determine what, if any, strategies could be developed and executed to avert potential problems.

If you have further questions about the Managed Care Rule, please contact your Locke Lord attorney.

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